

HAMILTON CANDEE (Cal. SBN 111376)
BARBARA JANE CHISHOLM (Cal. SBN 224656)
NICOLE COLLINS (Cal. SBN 338506)
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
Email: hcandee@altber.com; bchisholm@altber.com;
ncollins@altber.com

*Attorneys for Plaintiffs Golden State Salmon Association, Natural Resources
Defense Council, Inc., Defenders of Wildlife, and Bay.Org d/b/a The Bay Institute*

GLEN H. SPAIN (Cal. SBN 88097)
P.O. Box 11170
Eugene, OR 97440-3370
Telephone: (541) 689-2000
Email: fish1ifr@aol.com

*Attorney for Plaintiffs Pacific Coast Federation of Fishermen's Associations and
Institute for Fisheries Resources*

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS, *et al.*,

Plaintiffs,

v.

GINA RAIMONDO, in her official
capacity as Secretary of Commerce, *et al.*,

Defendants.

Case No. 1:20-cv-00431-DAD-EPG

**PLAINTIFFS' RESPONSE TO
SACRAMENTO RIVER INTERVENORS'
OBJECTIONS TO EVIDENCE CITED IN
PLAINTIFFS' OPPOSITION TO
FEDERAL DEFENDANTS' MOTION FOR
VOLUNTARY REMAND WITHOUT
VACATUR AND PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION FOR
2022 (DKT. 327)**

Hearing date: February 11, 2022
Judge: Hon. Dale A. Drozd

Courtroom 5, 7th Floor
2500 Tulare Street
Fresno, California 93721

1 The two evidentiary objections filed by Intervenor-Defendants Reclamation District No.
2 108, *et al.*, and Glenn Colusa Irrigation District, *et al.* (the “SRS Contractors”), and the Tehama-
3 Colusa Canal Authority (collectively, the “Sacramento River Intervenor” or “SR Intervenor”),
4 with respect to the expert declaration of Dr. Jonathan A. Rosenfield, Dkt. 327, are without merit
5 and should be overruled.

6 Dr. Rosenfield’s supplemental expert declaration submitted in support of Plaintiffs’ motion
7 for a preliminary injunction for 2022, Dkt. 325 (“Supp. Rosenfield Decl.”), is clearly admissible
8 and directly relevant to the questions of what irreparable harm is likely to befall the endangered
9 and threatened species of fish at issue in the case before a full resolution of the merits of Plaintiffs’
10 claims is possible. Remarkably, SR Intervenor continue to object to Dr. Rosenfield’s
11 consideration of NMFS’ 2017 draft Shasta RPA Amendment. Dkt. 327 at 5. However, the 2017
12 draft Shasta RPA Amendment is part of the administrative record in this case, *see* Dkt. 308; Dkt.
13 306-1, and is admissible as the admission of a party opponent, Fed. R. Evid. 801(d)(2)(D).

14 Further, SR Intervenor’s suggestion that Dr. Rosenfield, as an expert with vast experience
15 studying the effects of Water Project operations on fish populations, cannot consider public
16 documents regarding Water Project operations in forming his opinion, is wholly without merit.
17 Dr. Rosenfield certainly qualifies as an expert with specialized knowledge of these imperiled fish
18 species and the effects of Water Project operations on the fish populations. *See* Dkt. 82, ¶¶2–5,
19 Exh. A; Fed. R. Evid. 701, 702. Moreover, even if SR Intervenor could make out a valid concern
20 with respect to Dr. Rosenfield’s expertise (they cannot), such objections go to the weight accorded
21 to Dr. Rosenfield’s testimony, rather than to admissibility. *See S. Yuba River Citizens League v.*
22 *Nat’l Marine Fisheries Serv.*, 257 F.R.D. 607, 616 (E.D. Cal. 2009).

23 In addition to their narrative objections, SR Intervenor make objections to individual
24 paragraphs of Dr. Rosenfield’s declaration. Those objections should be overruled for the
25 following reasons.

Material Objected To	Grounds for Objection (as stated by SR Intervenors)	Plaintiffs' Response to Objection	Ruling
Supp. Rosenfield Decl. ¶¶33, 41–42	<p data-bbox="451 323 846 722">FRE 701, 702.</p> <p data-bbox="451 396 841 722">Dr. Rosenfield is a biologist. Rosenfield Decl. ¶ 1. He does not demonstrate any qualification to opine on the accuracy and sufficiency of temperature models or the interpretation of model results and their application to water resource management.</p> <p data-bbox="451 764 829 1199">Nevertheless, Dr. Rosenfield specifically opines on temperature modeling, concluding that temperature modeling performed in 2021 by NMFS “clearly demonstrated that releasing more water during the spring and summer led to higher river temperatures, higher winter-run TDM, and lower end-of September storage.”</p> <p data-bbox="451 1241 846 1925">FRE 702 requires “scientific, technical, or other specialized knowledge” to opine on such matters. This would include, for example, experience or education in hydrology, hydraulics, water temperatures, and water resources planning and management. Because Dr. Rosenfield does not demonstrate any level of experience or education in this subject matter, he is not qualified to offer opinions on temperature modeling. Therefore, these objections should be sustained and these opinions should be</p>	<p data-bbox="868 323 1328 982">SR Intervenors object to three paragraphs of Dr. Rosenfield’s declaration and assert that he should not be permitted to rely on Federal Defendants’ modeling and should not be allowed to explain that this modeling indicates that “releasing more water during the spring and summer” would result in higher in-stream temperatures and higher temperature-dependent mortality of winter-run Chinook salmon. SR Intervenors fail to identify any technical expertise that would be necessary for Dr. Rosenfield to consider and describe the temperature modeling.</p> <p data-bbox="868 1024 1328 1381">First, ¶33 does not rely on or refer to any technical knowledge of the accuracy of Reclamation’s temperature modeling. Rather, the objected-to paragraph reflects Dr. Rosenfield’s opinion regarding the effects of specific water temperatures on survival of salmon, an issue on which he is fully qualified to opine.</p> <p data-bbox="868 1423 1328 1925">Dr. Rosenfield has more than 20 years of experience analyzing the effects of Central Valley Project and State Water Project operations on salmon, including water temperature effects from reservoir operations. Dkt. 82 ¶¶2–5. This includes experience regarding Reclamation’s failure to adequately model and manage water temperatures at Shasta Dam, <i>see</i> Supp. Rosenfield Decl. ¶41, which does not require a degree in hydrology or hydraulics.</p>	<p data-bbox="1351 323 1516 354">☐ Sustained</p> <p data-bbox="1351 396 1516 428">☐ Overruled</p>

1		disregarded.	Second, Dr. Rosenfield’s opinion in ¶¶41–42 appropriately considers the analyses and conclusions of the National Marine Fisheries Service (“NMFS”). This information from NMFS is of the kind that experts “would reasonably rely on . . . in forming an opinion on the subject,” Fed. R. Evid. 703, and Dr. Rosenfield’s declaration fully discloses the basis for his conclusions.	
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9	Supp. Rosenfield Decl. ¶¶18, 31, 33, 38–39, 42	FRE 701, 702. Dr. Rosenfield states his agreement with a 2017 draft Shasta RPA regarding the performance of Reclamation’s river temperature model. Again, Dr. Rosenfield is not qualified to provide an opinion on river temperature models. Dr. Rosenfield does not state the facts, analysis, or methodology supporting his conclusion that the draft 2017 NMFS RPA correctly assesses Reclamation’s river temperature model. Moreover, Dr. Rosenfield is not entitled to rely on draft, non-peer reviewed documents such as the 2017 NMFS RPA. Notably, Sacramento River Intervenor’s asserted objections to the 2017 draft Shasta RPA in response to a prior Rosenfield Declaration’s references to it and PCFFA Plaintiffs’ counsel’s declaration attaching it. See Dkts. 127-3, at 5 and 190, at 8-9. The Court noted the Sacramento River Intervenor’s objection,	SR Intervenor’s object to six paragraphs in which Dr. Rosenfield cites or relies on a public document that is admissible evidence (as well as being a document in the administrative record), and which describes the effects of Reclamation’s temperature management on salmon. The objection is not well-taken. First, as noted above, Dr. Rosenfield has more than 20 years of experience analyzing the effects of Central Valley Project and State Water Project operations on salmon, including water temperature effects from reservoir operations. Dkt. 82 ¶¶2–5. He is more than able to review, understand, and explain to the Court the content of NMFS’ draft 2017 Shasta RPA. Second, SR Intervenor’s assert that Dr. Rosenfield is not “entitled” to rely on the 2017 NMFS RPA, suggesting that because the RPA was not adopted by Reclamation, there is some evidentiary bar to relying on it or explaining its content. That is not the case. Indeed, the draft 2017 NMFS RPA	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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1	clarifying: “However, here the	is included in the administrative	
2	court is simply considering	record in this case, Dkt. 308; Dkt.	
3	the document as part of the	306-1, and it is admissible	
4	consultation history and	evidence, including as an	
5	context, not for the truth of the	admission of a party opponent,	
6	matters addressed therein.”	Fed. R. Evid. 801(d)(2)(D).	
7	Dkt. 203, at 8 n.5 in relation	Moreover, it is a final, public	
8	to PCFFA Dkt. 85-8 (the 2017	document and experts are	
9	draft Shasta RPA). The	permitted to rely on government	
10	Sacramento River Intervenors	documents. (Indeed, experts may	
11	have since reiterated this	rely on documents that are not	
12	objection in response to	admissible. <i>See</i> Fed. R. Evid.	
13	PCFFA Plaintiffs’ continued	703).	
14	reliance on the objectionable	Finally, the suggestion that Dr.	
15	material. <i>See</i> Dkt. 282, at 6-7.	Rosenfield should not have	
16		considered NMFS’s analysis	
17		because it was not peer-reviewed	
18		is mistaken. An expert in Dr.	
19		Rosenfield’s field would	
20		reasonably rely on the draft RPA	
21		that NMFS finalized and publicly	
22		transmitted to Reclamation. Fed.	
23		R. Evid. 703.	

Respectfully submitted,

Dated: January 24, 2022

/s/ Barbara J. Chisholm

HAMILTON CANDEE (Cal. SBN 111376)
 BARBARA JANE CHISHOLM (Cal. SBN 224656)
 NICOLE COLLINS (Cal. SBN 338506)
 ALTSHULER BERZON LLP
 177 Post St., Suite 300
 San Francisco, CA 94108
 Telephone: (415) 421-7151
 Facsimile: (415) 362-8064

*Attorneys for Plaintiffs Golden State Salmon
 Association, Natural Resources Defense Council,
 Inc., Defenders of Wildlife, and Bay.Org d/b/a The
 Bay Institute*

Dated: January 24, 2022

/s/ Glen H. Spain

GLEN H. SPAIN (Cal. SBN 88097)
 P.O. Box 11170
 Eugene, OR 97440-3370
 Telephone: (541) 689-2000

PLS.’ RESPONSE TO SAC. RIVER INTERVENORS’ OBJECTIONS TO EVIDENCE

*Attorney for Plaintiffs Pacific Coast Federation of
Fishermen's Associations and Institute for Fisheries
Resources*

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PROOF OF SERVICE

CASE: *Pacific Coast Federation of Fishermen's Associations, et al. v. Raimondo, et al.*

CASE NO: U.S. Dist. Ct., E.D. Cal., Case No. 1:20-cv-00431-DAD-EPG

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. I hereby certify that on January 24, 2022, I electronically filed the following with the Clerk of the Court for the United States District Court for the Eastern District by using the CM/ECF system:

**PLAINTIFFS' RESPONSE TO SACRAMENTO RIVER INTERVENORS'
OBJECTIONS TO EVIDENCE**

All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of January, 2022, at Berkeley, California.

/s/ Barbara J. Chisholm
Barbara J. Chisholm